

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)
LAW OFFICE OF LEAH E. CAPECE, ESQ., LLC
1338 North Avenue
Elizabeth, New Jersey 07208
(908) 353-6700
(908) 838-9991 (facsimile)
Leah E. Capece, Esq.
lcapece@leclawonline.com
Attorneys for Diane Bates

In Re:
Patrick Tavares, Debtor

Case No.: 18-11636
Chapter: 13
Hearing Date: July 11, 2018 at 9:00 a.m.
Judge: Hon. Kathryn C. Ferguson

**NOTICE OF MOTION
TO PERMIT DEBTOR TO FILE CLAIMS ON BEHALF OF CREDITORS**

The Debtor, Patrick Tavares has filed papers with the court requesting that an order be entered allowing the debtor to file proof of claim on behalf of creditors holding certain priority claims.

YOUR RIGHTS MAY BE AFFECTED. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one).

If you do not want the court to grant this motion, or if you want the court to consider your views, you or your attorney must file with the clerk at the address listed below, a written response explaining your position no later than 7 days prior to the hearing date.

Hearing Date: July 11, 2018
Hearing Time: 9:00 a.m.
Hearing Location: 402 East State Street
Trenton, N.J. 08608
Courtroom Number: 2

If you mail your response to the clerk for filing, you must mail it early enough so the court will receive it on or before 7 days prior to the hearing date.

You must also mail a copy of your response to:

Albert Russo, Standing Chapter 13 Trustee
CN 4853
Trenton, NJ 08650

Creditors on annexed list

If you, or your attorney, do not take the steps outlined above, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

Date: June 19, 2018

/s/ Leah E. Capece

Leah E. Capece, Esq.
Attorney for Debtor

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CERTIFICATION OF DEBTOR IN SUPPORT OF MOTION

I, Patrick Tavares, debtor in the above captioned case, submit this Certification in support of the Motion for to file proof of claim on behalf of creditors.

1. I am fully familiar with the facts of this matter and all statements made herein are based upon my personal knowledge unless otherwise indicated.
2. In or about January 2017 I opened a restaurant in Green Brook, New Jersey known as GB Pizza NJ, LLC doing business as Fornos Pizza Company. Due to many unforeseen circumstances the business was not profitable and I closed the doors in October 2017. I filed Chapter 7 on behalf of the Company on January 27, 2018 (Case No. 18-11637). A Final Decree was issued on May 7, 2018, with no assets administered.
3. During the course of running the business I employed several employees. Unfortunately, I lacked the funds to tender their final paychecks. Accordingly, I have scheduled their claims on my petition and in my Chapter 13 Plan as priority claims.
4. I have inspected all available records and information and have determined that the following employees are owed gross wages as follows: Allen Orellana (\$700), Craig Hargrove (\$250), Timothy Wojcik (\$100), Yin Lai (\$1,200). These wages were earned within 180 days before the filing of the bankruptcy petition.

I certify under penalty of perjury that the above is true.

Date: June 19, 2018

/s/ Patrick Tavares
Patrick Tavares, Debtor

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In Re:

Patrick Tavares, Debtor

Case No.: 18-11636

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Hearing Date: July 11, 2018 at 9:00 a.m.

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LEGAL BRIEF

I. Facts and Procedural History

Patrick Tavares (“Debtor”) brings this motion seeking to file proof of claim on behalf of four (4) employees employed through a limited liability company known as GB Pizza NJ, LLC dba Fornos Pizza Company. Debtor solely owned and operated the business which ceased operation in or about October 2017.

The Debtor filed a voluntary Chapter 13 bankruptcy petition with this Court on January 27, 2018. The Debtors’ modified Plan, filed April 12, 2018, was confirmed by Order dated June 5, 2018 [Docket No. 29].

The Debtor listed four (4) priority claims on Schedule E/F. These claims are priority pursuant to 11 U.S.C.A. § 507(a)(4)(A). These claims are also listed in Debtor’s Chapter 13 Plan and Amended Plan.

Notice of Chapter 13 Bankruptcy Case was mailed to the aforementioned priority creditors at their last known address. However, none of them have filed a proof of claim. The Debtor seeks to file proof of claim on their behalf to enable the Trustee to disburse funds to them in satisfaction of these debts owed.

II. Legal Argument

Pursuant to 11 U.S.C. § 501(c), “[i]f a creditor does not timely file a proof of such creditor's claim, the debtor or the trustee may file a proof of such claim.” Rule 3004 permits a debtor to file a proof of the claim within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or

3003(c), whichever is applicable. Fed. R. Bankr. P. 3004. Pursuant to Fed. R. Bankr. P. 3002, a proof of claim is timely filed “if it is filed not later than 70 days after the order for relief.”

As the applicable Order for relief was entered on June 5, 2018, Debtor contends that his request is timely and seeks an appropriate order from the Court allowing him to file these claims, and directing and/or allowing the Trustee to pay them in accordance with the Plan, as confirmed.

Date: June 19, 2018

/s/ Leah E. Capece

Leah E. Capece, Esq.
Attorney for Debtor

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Leah E. Capece (LC-2609)
lcapece@leclawonline.com
Attorneys for Diane Bates

In Re:
Patrick Tavares, Debtor

Case No.: 18-11636
Chapter: 13
Hearing Date: June 27, 2018 at 9:00 a.m.
Judge: Hon. Kathryn C. Ferguson

CERTIFICATION OF SERVICE

1. I, Leah E. Capece, Esq. represent Patrick Tavares, Debtor, in this matter.
2. On June 19, 2018 I sent a copy of the following pleadings and/or documents to the parties listed in the chart below.
 - i. Notice of Motion
 - ii. Certification of Debtor
 - iii. Legal Brief
 - iv. Proposed Order
3. I certify under penalty of perjury that the above documents were sent using the mode of service indicated.

Date: June 19, 2018

/s/ Leah E. Capece
Leah E. Capece, Esq.
Attorney for Diane Bates

Name and Address of Party Served	Relationship of Party to the Case	Mode of Service
See annexed list	Creditors	<input type="checkbox"/> Hand-delivered <input checked="" type="checkbox"/> Regular mail <input type="checkbox"/> Certified mail/Return receipt requested <input type="checkbox"/> Other _____ (As authorized by the court or rule. Cite the rule if applicable.)
Albert Russo, Standing Chapter 13 Trustee CN 4853 Trenton, NJ 08650	Trustee	<input type="checkbox"/> Hand-delivered <input type="checkbox"/> Regular mail <input type="checkbox"/> Certified mail/Return receipt requested <input checked="" type="checkbox"/> Other: CMECF (As authorized by the court or rule. Cite the rule if applicable.)
Denise E. Carlon Rebecca Ann Solarz Harley-Davidson Credit Corp dcarlon@kmlawgroup.com rsolarz@kmlawgroup.com	Counsel for Harley Davidson	<input type="checkbox"/> Hand-delivered <input type="checkbox"/> Regular mail <input type="checkbox"/> Certified mail/Return receipt requested <input checked="" type="checkbox"/> Other <u>Email</u> (As authorized by the court or rule. Cite the rule if applicable.)
		<input type="checkbox"/> Hand-delivered <input type="checkbox"/> Regular mail <input type="checkbox"/> Certified mail/Return receipt requested <input type="checkbox"/> Other _____ (As authorized by the court or rule. Cite the rule if applicable.)

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**ORDER GRANTING MOTION
FOR DEBTOR TO FILE CLAIMS**

The relief set forth on the following page is **ORDERED**.

The Court having reviewed the movant's Motion and any related responses or objections, it is hereby

ORDERED that:

1. Within ten (10) days of the date of this Order, the Debtor shall file proof of claim on behalf of each of the priority creditors Allen Orellana, Craig Hargrove, Timothy Wojcik, Yin Lai;
2. The Debtor shall file the claims for net wages owed, to account for the expense of required state and federal payroll tax withholdings;
3. Debtor shall be responsible for preparation and filing of required state and federal payroll tax returns;
4. Debtor shall pay all required state and federal payroll taxes due, outside of the plan;
5. The Debtor shall serve a copy of this order on the Office of the U. S. Trustee and any trustee appointed in this case, and any other party who entered an appearance on the motion.